385, 16 L. R. A. (N. S.) 991; *Buckley* v. *Bangor, etc., R. Co.*, 113 Me. 164, 93 Atl. 65, L. R. A. 1916A, 617.

The decision in the instant case is based on the reasoning that the designation "free pass" as applied to transportation issued or given by the railroad companies to shippers and carriers of stock had acquired a definite and well known meaning, sanctioned by decisions of the courts, prior to the enactment of the statute of June 29, 1906. That is, that such transportation is not "free" in the popular sense, but transportation for hire with all the legal incidents of paid transportation, therefore Congress must be presumed to have used the designation in the latter sense in the act in question.

In some states in regard to intrastate shipments it is provided by statute that no agreement by a common carrier for exemption from liability for injury caused by its own negligence or misconduct, shall be valid, and an agreement with a passenger travelling on a free pass, relieving the carrier from the consequences of its own negligence or that of its servants, is invalid. Va. Code, § 1296; *Norfolk, etc., R. Co.* v. *Tanner*, 100 Va. 379, 41 S. E. 721. See DOBIE, BAILM. & CAR. 614.

CARRIERS—DUTY TO PASSENGERS—APPROACHES TO TRAINS.—A crowd of excursionists were waiting along a railroad track where they were to board a train. In the rush for the car, the plaintiff's husband was pushed against a moving train and fatally injured. The company had taken no steps to prevent a rush of the crowd in entering the car. The only approach to the train was a cinder path poorly lighted. *Held*, the plaintiff can recover. *Coyle* v. *Phila. & Reading Ry. Co.* (Pa.), 100 Atl. 1005.

A person who has presented himself at the proper place intending to board a train when it arrives, is a passenger and a carrier owes him a duty to provide suitable and safe accommodations and convenient ways of access to trains. *Jordon* v. *New York, etc., R. Co.*, 165 Mass. 346, 32 L. R. A. 101; *Warren* v. *Felchburg Ry. Co.*, 8 Allen (Mass.) 227, 85 Am. Dec. 700. Thus it must keep its platforms and approaches lighted sufficiently to afford its passengers safe passage to and from trains. *Louisville, etc., R. Co.* v. *Treadway*, 142 Ind. 491, 40 N. E. 807.

There are two views as to the amount of care required of a carrier in providing for the accommodation of intending passengers. One line of cases holds that the carrier is bound to use the highest degree of practicable care. Thus where on many previous occasions large crowds have assembled at a station accompanied by a struggle to get on the car, the carrier must anticipate a recurrence and take extra precautions to prevent accidents. *Kuhlen* v. *Boston, etc., Ry. Co.*, 193 Mass. 341, 79 N. E. 815. But the carrier is not liable for injuries resulting from a strike riot which resulted without warning. *Nute* v. *Boston & M. Ry. Co.*, 214 Mass. 184, 100 N. E. 1099.

By the other view, the carrier is liable only for a failure to exercise such care as an ordinary prudent business man would exercise under the same circumstances. *McCormick* v. *Detroit, etc., R. Co.*, 141 Mich. 17, 104 N. W. 390; *Kirby* v. *Delaware, etc., R. Co.*, 46 N. Y. Supp. 777. So the character and extent of the lighting must depend upon the character and extent of the business at any particular station. *Sargent* v. *St. Louis,*

*etc., R. Co.*, 114 Mo. 348, 21 S. W. 823. In cases similar to the instant case, where a carrier by advertisement and reduced rates had induced large crowds to assemble at its terminal, it was held liable for injuries to a passenger, who was pushed by the crowd. *Taylor* v. *Pennsylvania Co.*, 50 Fed. 755; *Illinois Cent. R. Co.* v. *Treat*, 199 Ill. 576, 54 N. E. 290.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE—ANTICIPATION OF WAR.—A German steamship, owned by the defendant, sailed from New York with a consignment of gold belonging to the plaintiff, to be delivered at Plymouth, England. The bills of lading were made out in American form, excepting only "arrest and restraint of princes, rulers, or people." The master had knowledge of political facts indicating that Germany was on the verge of war with England. When far out on the high seas, he received a wireless message from the defendant, stating that war had been declared, and directing him to return to New York. If war had actually been declared the master would have been excused from the performance of the contract; but, in fact, war had not broken out, and the ship might have reached Plymouth a few hours before war was officially declared. The master, relying in good faith on the message, returned to America. The steamship company was sued for its failure to deliver the gold. *Held*, the defendant is not liable. *North German Lloyd* v. *Guaranty Trust Co.*, 37 Sup. Ct. 49.

It is a general rule of contract law that the breach of the express terms of a contract will be excused, when the non-performance was caused by circumstances, which were not in the minds of the parties, and which, if they had been dealt with, would have doubtless materially altered the contract. Thus, a breach of a covenant was excused, when caused by obedience to a subsequent act of the legislature, not within the contemplation of the parties. *Baily* v. *De Crespigny*, L. R. 4 Q. B. 180. Also, a laborer was excused from performance of his contract, on account of the prevalence of cholera in the vicinity, though it appeared that other laborers, who continued to work there, failed to contract the disease. *Lakeman* v. *Pollard*, 43 Me. 463, 69 Am. Dec. 77.

The same principle should apply to contracts of shipping. In most of the cases in which the master was excused from performance of his contract, the exceptions in the bills of lading were held to justify such non-performance. *The Styria*, 186 U. S. 1; *Nobel's Explosive Co.* v. *Jenkins*, L. R. (1896) 2 Q. B. 326. However, in these cases the courts went further, and declared that, aside from the terms of the bills of lading, the conduct of the captain would be justified on the ground that the duty was imposed upon him of taking reasonable care of the vessel and the cargo intrusted to him. *The Styria, supra; Nobel's Explosive Co.* v. *Jenkins, supra.* And, though these statements are *dicta*, yet they clearly show the trend of authority.

In the principal case, it must be noted that the court based its decision, not only on the exception in the bill of lading, but mainly upon what it considered a necessarily implied exception that, if the master, under reasonable apprehension of imminent danger, should deem it proper to turn back, he would be justified in doing so. Had it been